

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, March 09, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Brackett, Senators Bair, Johnson, Mortimer, Patrick, Guthrie, and Stennett

**ABSENT/ EXCUSED:** Senator Jordan

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Heider** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:31 p.m.

**MINUTES APPROVAL:** **Senator Johnson** moved to approve the Minutes of March 2, 2020. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

**H 547** Relating to mineral rights; regarding locator work, conditions of certain mineral leases, and forfeiture of leases.

**Benjamin J. Davenport**, Executive Vice President, Idaho Mining Association (IMA), explained that Idaho's miners, prospectors, and others extract minerals on state endowment lands using mineral leases governed by the State Land Board. This bill addresses the future of the leasing program. He explained the purpose of this bill is to encourage investment in mining exploration, prospecting, and operations of mining leases on endowment lands since exploration and development of a potential mineral resource can take millions of dollars and over a decade to prove and permit. The main changes include:

- allowing the terms of mining leases to continue so long as mining exploration, prospecting, or operations are being performed;
- lengthen the potential lease length;
- allow rent rates to be tiered to inflation;
- provide for the option of pre-paid royalties; and
- define rights as to access to minerals for a lease.

He expounded that this bill is supported by the IMA, its individual companies, Idaho Association of Commerce and Industry, and numerous other non-IMA firms and families that hold mineral leases or have pending lease applications with the State. He is unaware of any opposition.

**DISCUSSION:** **Senator Stennett** and **Mr. Davenport** discussed the bill's inclusion of locations for exploration being the beds of all navigable rivers, being the strip of land bordering the river between the high water mark and the river, and that this location is used for dredge and/or placer types of leases.

**TESTIMONY:** **Mick Thomas**, Division Administrator, Minerals, Public Trust, and Oil and Gas for the Idaho Department of Lands, clarified that motorized exploration on the lands between the ordinary high water mark and any navigable river of the state shall be prohibited except upon written approval from the Board of Land Commissioners. He also discussed permits and their costs.

**Jeremy C. Chou**, Partner, Givens Pursley, testified on behalf of his client, Keceph Mountain L.C., in support of the bill. He explained his client was a father-daughter hard rock mining operation that mines for silver and gold, and in 2013 won a public auction for a mining lease. For the past six years they have attempted to negotiate a lease and have yet to execute a lease. He detailed the main reasons why the lease has not been executed and that this bill fixes those issues.

**Wayne Hammon**, CEO of Idaho Associated General Contractors of America (AGC), explained their members mine a lot of aggregate, much of which is on state endowment lands that his members lease. AGC supports the bill and believes it will make their processes even better.

**MOTION:**

**Senator Guthrie** moved to send **H 547** to the floor with a **do pass** recommendation. **Vice Chairman Brackett** seconded the motion. The motion carried by **voice vote**. Senator Crabtree will carry the bill on the floor.

**H 565**

Relating to flood control districts; to provide for petitions for annexation of land.

**Daniel Steenson**, Attorney at Law, Sawtooth Law Offices, spoke representing Boise River Flood Control District Number Ten. He detailed that flood control districts conduct operations and undertake projects to minimize flood risk and flood damages for lands within their boundaries. He presented a powerpoint to describe what flood districts are and do (see attachment 1). This bill creates a process for flood control districts to consider and approve land owner petitions for annexation to include their land in the district, without requiring the Idaho Department of Water Resources' (IDWR) review and approval. The proposed annexation procedure is patterned after the statutory annexation procedures for irrigation districts and ground water districts. He stated that both IDWR and the Idaho Water Users Association support the bill.

**TESTIMONY:**

**Paul Arrington**, Executive Director and General Counsel, Idaho Water Users Association, expressed their support for its legislation. He reiterated that the bill is patterned off of irrigation and groundwater districts' provisions authorizing similar annexations. It has worked for those entities and it should work well in this instance.

**MOTION:**

**Vice Chairman Brackett** moved to send **H 565** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Chairman Heider will carry the bill on the floor.

**H 592**

Relating to stockwater; to provide for content of orders to show cause, that certain stockwater rights are subject to forfeiture, grazing allotments, and revise provisions for limits of use.

**Senator Harris** discussed that the Idaho Supreme Court ruled in *Joyce Livestock Company vs. United States of America (Joyce)* that the federal government cannot hold water rights without owning livestock. This bill cleans up and addresses forfeiture and adds a new section. He informed that if the director of water resources finds that a stockwater right has not been put to beneficial use for a term of five years, applying to anyone that has a stockwater right, the director shall issue an order to show cause. If there is no response to the show cause order, the right will be considered forfeited. This change to the current law only applies to the federal government not using stockwater for beneficial use.

- TESTIMONY:** **Bill Myers**, Partner, Holland & Hart, spoke as a representative of the offices of the Senate President Pro Tempore and the Speaker of the House. He noted that Representative Bedke asked him to talk about his support for this bill. Mr. Myers provided background information about the Idaho Supreme Court unanimously entered decision in *Joyce* and addressed the question of the federal government's non-use of stockwater on federal grazing allotments. In 2017 the Legislature codified the *Joyce* decision and prevented the federal government from holding the rights, and set up a forfeiture process. In 2018 some concerns were raised by the federal agencies regarding the forfeitures directed to them. This bill is neutral in its application to any stockwater user in the state and sets up a procedural mechanism that is already codified in Idaho water law. It is important to note this only affects *de minimus* stockwater, which is 13,000 gallons a day or less.
- DISCUSSION:** **Senator Bair** asked if the federal government had been consulted and if they will accept this piece of legislation. **Mr. Myers** noted that some federal employees were in the audience and that he could not speak for them. He stated they had been in extended discussion with the Bureau of Land Management, the United States Forest Service, and the Department of Justice over some years, and that Speaker Bedke had been actively involved in the discussions.
- Senator Stennett** and **Mr. Myers** discussed the fiscal note and what this procedural mechanism would cost IDWR.
- MOTION:** **Senator Bair** moved to send **H 592** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion.
- TESTIMONY:** **Kathleen Marion Carr**, Field Solicitor, United States Department of the Interior, stood to request that her client speak to this bill. **June Shoemaker**, Deputy State Director for Resources and Science, Idaho Bureau of Land Management (BLM), Idaho State Office, spoke to the Committee in opposition to this bill as stockwater rights are of critical importance to BLM Idaho. She read her written testimony (see attachment 2).
- Vice Chairman Bracket** declared a possible conflict of interest pursuant to Senate Rule 39(H), but intended to vote.
- TESTIMONY:** **Mr. Myers** clarified that the State would have to take a stand on where it believes it has its rights under existing water law, and on the ability of the State to control those water rights as a key property right of the State.
- SUBSTITUTE MOTION:** **Senator Stennett** moved that **H 592** be held in Committee until the next Committee meeting to solve potential differences. The motion failed for lack of a second.
- VOICE VOTE:** The motion to send **H 592** to the floor with a **do pass** recommendation carried by **voice vote**, with **Senator Stennett** requesting that she be recorded voting nay. Senator Harris will carry the bill on the floor.
- GUBERNATORIAL APPOINTMENT:** The Gubernatorial Reappointment of Craig Hill to the Lake Pend Oreille Basin Commission (Commission).
- Chairman Heider** explained that Mr. Hill left the country yesterday and was not returning until after the session ends. He reminded the Committee that this was a reappointment and that Mr. Hill had been on the Commission since its inception.
- MOTION:** **Senator Mortimer** moved to send the Gubernatorial reappointment of Craig Hill to the Lake Pend Oreille Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Bair** seconded the motion.

- DISCUSSION:** **Senator Bair** discussed that he recommended Mr. Hill to the commission since it is a reappointment, and the Committee has spoken with Mr. Hill previously.
- VOICE VOTE:** The motion to send the Gubernatorial reappointment of Craig Hill to the Lake Pend Oreille Basin Commission to the floor with a recommendation that he be confirmed by the Senate carried by **voice vote**. Senator Woodward will carry the appointment on the floor.
- ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 2:43 p.m.

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Senator Heider  
Chair

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Erin Miller  
Secretary